

Debtor's Ex. 27

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS
PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY

AMENDMENT TO CONCESSION AGREEMENT

AMENDMENT TO CONCESSION AGREEMENT (this "Agreement"), dated September 3, 2009, by and among:

PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY (the "PRHTA"), a public corporation and instrumentality of the Commonwealth of Puerto Rico, represented herein by its Executive Director, Rubén A. Hernández Gregorat, acting under the authority of Act No. 74 of June 23, 1965, as amended (9 L.P.R.A. §2004(h)), and the Reorganization Plan No. 6 of 1971 (3 L.P.R.A. App. III Art. VI) and by the Secretary of the Department of Transportation and Public Works, Rubén A. Hernández Gregorat, acting under the authority of the Reorganization Plan No. 6 of 1971, *supra*; and

AUTOPISTAS DE PUERTO RICO Y COMPAÑÍA, S.E., a partnership organized and existing under the laws of the Commonwealth of Puerto Rico (hereinafter the "Concessionaire").

WITNESSETH

WHEREAS, on December 20, 1991, the parties hereto entered into a Concession Agreement for the Final Design, Construction, Operation and Maintenance of a Privatized Transportation Facility, as amended on March 20, 1992, and on October 30, 2003 (the "Concession Agreement"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the Concession Agreement.

WHEREAS, the Concession Agreement currently has a Term of thirty-five (35) years, commencing on the Effective Date, as defined therein. The PRHTA and the Concessionaire have agreed to amend the Concession Agreement to extend the Term thereof to the maximum allowed by Act. No. 4 of August 23, 1990, 9 L.P.R.A. §2004a, and to make certain other modifications thereto, as provided hereinafter.

WHEREAS, in connection with certain claims of the Concessionaire filed under civil action Autopistas de Puerto Rico y Compañía, S.E. vs. Autoridad de Carreteras y Transportación, Civil Case Num. KAC97-0253 (803), in the First Instance Court of the Commonwealth of Puerto Rico, San Juan Superior Part, the Concessionaire and the PRHTA, following extensive negotiations, have agreed to settle all claims for relief and causes of action, whether known or unknown, from the beginning of the world to the date of this Agreement, including, but not limited to, any claims arising out of or relating to facts and circumstances arising out of the issues alleged in the above-captioned complaint, whether based in tort, contract, statute, equity, or other legal theory, in consideration to certain amendments to the Concession Agreement pursuant to a settlement stipulation to be filed in court for its approval and consequent judgment.

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WHEREAS, as of October 1, 2003, the Concessionaire requested, and the PRHTA agreed, for the Authority to issue special facility revenue refunding bonds to refund the then outstanding Puerto Rico Highway and Transportation Authority Special Facility Revenue Bonds, 1992 Series A, B and C (San José Lagoon Bridge Project), as a result of which the Authority issued its Special Facility Revenue Refunding Bonds, 2003 Series A (Teodoro Moscoso Bridge) (the "Bonds") under the provisions of the Trust Agreement.

WHEREAS, Section 1201 of the Trust Agreement allows the PRHTA and the Concessionaire to amend and supplement the Concession Agreement from time to time for certain purposes, without requiring the consent of either the trustee under the Trust Agreement or the holders of the Bonds. Particularly, Section 12.01(v) allows amendments and supplements "to change the term of the Concession Agreement or the economic and financial covenants therein or to make any other change which, in the judgment of the Trustees, will not restrict, limit or reduce the obligation of the Company [the Concessionaire] to make the payments under the Loan Agreement, to pay the principal of or interest on the bonds or otherwise impair the security of the bondholders under this Agreement." (Emphasis supplied). Section 1201 does require that any amendments or supplements be filed with the Trustee and be in a form satisfactory to the Trustee.

NOW, THEREFORE, having the PRHTA and the Concessionaire found it to the best of their interests to terminate the ongoing above referred litigation and having the PRHTA and the Concessionaire agreed that their respective interests are best served by amending certain terms of the Concession Agreement, and in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

TERMS AND CONDITIONS

Section 1. The Concessionaire and the PRHTA hereby agree that in order to reflect and perfect the terms and conditions under which the parties have settled the above referred judicial case, the Concessionaire and the Authority hereby amend the Concession Agreement as follows:

(a) The following Sections of the Agreement are hereby deleted:

Section 1.5; Section 1.7; Section 1.28; Section 1.36; Section 1.38; Section 1.56;
and Section 1.58.

(b) Section 1.66 of the Agreement is hereby amended to read as follows:

The term "Toll Revenues" shall mean the revenues derived and actually collected and received by the Concessionaire from users of the Transportation Facility in exchange for the use of the Transportation Facility. For purposes of computing Toll Revenues for any given period of time, the number of vehicles using the Transportation Facility shall be multiplied by the then effective and applicable Toll Rate for each of such vehicles. The product thereof shall be adjusted to

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reduce the number of vehicles which are exempt from the payment of the toll, such as police officers, fire department personnel, emergency services, ambulances, etc., discounts given to frequent users, and the commission or royalty payable to the Authority and/or any other patent of licensor owner(s), or other similar services and/or vendor, for the use of the "Auto-Expreso" type vehicle lanes (which is currently five percent (5%)), subject further to the provisions of Section 10.2 of this Agreement which are not inconsistent herewith. *

(c) Section 2.2(a) of the Agreement is hereby amended to read as follows:

This Agreement shall have a term of 50 years commencing on February 23, 1994, the date of commencement of the operation, administration and maintenance phase of the Transportation Facility, and ending on February 22, 2044 (the "Term"). The Term may be earlier terminated as specifically provided herein.

(d) Section 7.8 of the Agreement is hereby amended to read as follows:

The Concessionaire has the right and shall pay from Total Revenues all Debt Service Costs, Operating and Maintenance Costs, Renewal and Replacement Costs not covered by reserves, subordinated loans and provision to the Reserve Accounts.

(e) Section 7.9 of the Agreement is hereby amended to read as follows:

Section 7.9 Distributions to Authority and Concessionaire.

(a) After the end of every Fiscal Year and delivery of financial statements to the Authority by Concessionaire as set forth in Section 7.10, there shall be distributed by the Concessionaire to the Authority:

(i) Commencing on the date of this Agreement (September 3, 2009) and until (and including) February 22, 2027, five percent (5%) of Toll Revenues; and

(ii) Commencing February 23, 2027, and through the end of the Term, sixty one point five percent (61.5%) of Toll Revenues.

(b) The Concessionaire will pay to the Authority the distributions referred to in sub-section (a) of this Section once a year within 30 days after delivery of the Concessionaire's financial statements for the immediately preceding Fiscal Year as provided in Section 7.10 hereof, but in no event later than 120 days from the end of such Fiscal Year. The financial statements shall be audited by the Concessionaire's independent certified public accountant ("CPA"). Distributions to the Authority pursuant to sub-section (a) of this Section will be treated as a fee which constitutes an operational expense of the concession.

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(c) Any income earned by the Concessionaire from sources other than those set forth under this Agreement and that is unrelated to the Transportation Facility shall not be considered as income for purposes of this Agreement.

(f) Section 7.10(c) of the Agreement is hereby amended to read as follows:



(c) Within 120 days after the end of each Fiscal Year, the Concessionaire shall submit to the Authority financial statements setting forth the following information for such Fiscal Year:

(i) The amount of Total Revenues, Operating and Maintenance Costs, Capital Outlay Costs and Debt Service.

(ii) Financial information demonstrating the current payment of Debt Service, the outstanding principal balance of the Bonds, the amount of the Debt Service Reserve Fund and the coverage ratios set forth in the Financing Documents.

(iii) The amount of any distribution by the Concessionaire, if any, to the Authority and to the Concessionaire.

(iv) The amount of, and changes in, the Reserve Accounts, if any.

Section 2. The Concessionaire and the PRHTA expressly agree, represent and warrant that the above amendments to the Concession Agreement do not constitute an amendment to the Loan Agreement or the Trust Agreement and are not intended, and in any manner or form are to be deemed, to restrict, limit or reduce the obligations of the Concessionaire and/or the PRHTA to make payments as provided under the Loan Agreement and/or the Trust Agreement, or to otherwise impair the security of the holders of the Bonds under the Bonds or the Trust Agreement. Nothing herein shall affect the obligation of the Concessionaire to deposit all Revenues (as defined in the Loan Agreement) with the Trustee as provided in the Loan Agreement and the Trust Agreement, or shall give the Concessionaire the right to receive any funds from the Trustee other than as currently provided in the Trust Agreement, it being agreed that the amendments set forth herein relate only to the agreements between the Concessionaire and the PRHTA. To the extent it is determined by a court of law or otherwise that any of the provisions of this Agreement restrict, limit or reduce such obligations, or impair the rights or security of the holders of the Bonds under the Bonds and the Trust Agreement, such provision or provisions shall become inoperative for all legal purposes, retroactive to the date of such restriction, limitation, reduction or impairment. The parties agree that in such case they shall take such further actions as may be necessary (including further amendments to the Concession Agreement) to enforce and perfect the intent of the agreements contained in this Agreement without restricting, limiting or impairing the rights of the holders of the Bonds.

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Section 3. This Agreement shall be effective immediately upon its execution by both parties.

Section 4. All the covenants, promises and agreements contained in this Agreement by or on behalf of, or for the benefit of, the Concessionaire and the PRHTA shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 5. All other provisions of the Concession Agreement not amended hereby remain in full force and effect.

Section 6. The laws of the Commonwealth shall be applied in the interpretation and enforcement of this Agreement.

Section 7. This Agreement may be executed in several counterparts, all or any of which shall be regarded, for all purposes as one original, and shall constitute and be but one and the same instrument.

Section 8. In the event the Term of the Concession Agreement, as stated in the amendment to Section 2.2 (a) above, violates the limitations contained in Act No. 4 of August 23, 1990, 9 L.P.R.A. §2004a., or if any other covenant, condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, such specific condition, covenant or provision shall be deemed severable from the remainder of the Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained or otherwise contained in the Concession Agreement, but such provision shall be deemed valid to the extent of the scope or breath permitted by law.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Authority and the Concessionaire have executed this Agreement the day and year first above written.

AUTHORITY:

**PUERTO RICO HIGHWAY AND
TRANSPORTATION AUTHORITY**

By: 

Rubén A. Hernández Gregorat
Executive Director
Puerto Rico Highway and Transportation
Authority

By: 

Rubén A. Hernández Gregorat
Secretary
Department of Transportation
and Public Works

CONCESSIONAIRE:

**AUTOPISTAS DE PUERTO RICO Y
COMPAÑIA, S.E.**

By: 

Rafael B. Acosta Rosario
Director and General Manager
Autopistas Corporation
Managing Partner of Autopistas
de Puerto Rico y Compañía, S.E.

Revised in its legal format by
Rebecca Rojas Colón, General
Counsel Puerto Rico Highway
Authority.


Rebecca F. Rojas Colón